77-22b-1 Immunity granted to witness.

(1)

(a) A witness who refuses, or is likely to refuse, on the basis of the witness's privilege against self-incrimination to testify or provide evidence or information in a criminal investigation, including a grand jury investigation or prosecution of a criminal case, or in aid of an investigation or inquiry being conducted by a government agency or commission, or by either house of the Legislature, a joint committee of the two houses, or a committee or subcommittee of either house, may be compelled to testify or provide evidence or information by any of the following, after being granted use immunity with regards to the compelled testimony or production of evidence or information:

(i) the attorney general or any assistant attorney general authorized by the attorney general;

(ii) a district attorney or any deputy district attorney authorized by a district attorney;

(iii) in a county not within a prosecution district, a county attorney or any deputy county attorney authorized by a county attorney;

(iv) a special counsel for the grand jury;

(v) a prosecutor pro tempore appointed under the Utah Constitution, Article VIII, Sec. 16; or

(vi) legislative general counsel in the case of testimony pursuant to subpoena before:

(A) the Legislature;

(B) either house of the Legislature; or

(C) a committee of the Legislature, including a joint committee, a committee of either house, a subcommittee, or a special investigative committee.

(b) If any prosecutor authorized under Subsection (1)(a) intends to compel a witness to testify or provide evidence or information under a grant of use immunity, the prosecutor shall notify the witness by written notice. The notice shall include the information contained in Subsection (2) and advise the witness that the witness may not refuse to testify or provide evidence or information on the basis of the witness's privilege against self-incrimination. The notice need not be in writing when the grant of use immunity occurs on the record in the course of a preliminary hearing, grand jury proceeding, or trial.

(2) Testimony, evidence, or information compelled under Subsection (1) may not be used against the witness in any criminal or quasi-criminal case, nor any information directly or indirectly derived from this testimony, evidence, or information, unless the testimony, evidence, or information is volunteered by the witness or is otherwise not responsive to a question. Immunity does not extend to prosecution or punishment for perjury or to giving a false statement in connection with any testimony.

(3) If a witness is granted immunity under Subsection (1) and is later prosecuted for an offense that was part of the transaction or events about which the witness was compelled to testify or produce evidence or information under a grant of immunity, the burden is on the prosecution to show by a preponderance of the evidence that no use or derivative use was made of the compelled testimony, evidence, or information in the subsequent case against the witness, and to show that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information. The remedy for not establishing that any proffered evidence was derived from sources totally independent of the compelled testimony, evidence, or information is suppression of that evidence only.

(4) Nothing in this section prohibits or limits prosecutorial authority granted in Section 77-22-4.5.

(5) A county attorney within a prosecution district shall have the authority to grant immunity only as provided in Subsection 17-18a-402(3).

(6) For purposes of this section, "quasi-criminal" means only those proceedings that are determined by a court to be so far criminal in their nature that a defendant has a constitutional right against self-incrimination.

Amended by Chapter 1, 2013 Special Session 1
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